



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2018-0533; FRL-10003-64-OLEM]

Georgia: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final approval.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is approving the Georgia Environmental Protection Division's partial Coal Combustion Residuals (CCR) state permit program, which will now operate in lieu of the Federal CCR program, with the exception of certain provisions for which the State did not seek approval. EPA has determined that Georgia's partial CCR permit program meets the standard for approval under RCRA. Facilities operating under the State's program requirements and resulting permit provisions are also subject to EPA's information gathering and inspection and enforcement authorities under RCRA and other applicable statutory and regulatory provisions.

DATES: The final approval of Georgia's partial CCR state permit program is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: *Docket.* EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2018-0533. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number

for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket Center is (202) 566-1742.

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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. General Information

A. Overview of Final Approval

EPA is approving in part the Georgia CCR permit program, pursuant to RCRA section 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). Georgia’s CCR permit program authorizes the Georgia Environmental Protection Division (GA EPD) to enforce State rules related to CCR activities as well as to handle permit applications and to enforce permit violations. Georgia’s CCR permit program will operate in lieu of the Federal CCR program, (40 CFR part 257, subpart D) with the exception of the provisions for which the State did not seek approval, as further explained in Unit II of this *Federal Register* document. The Federal requirements corresponding to these excluded state provisions remain applicable to the Georgia facilities. The fact that Georgia is receiving partial program approval does not mean it must subsequently apply for a full program

approval. However, Georgia could choose to revise its CCR permit program at some point in the future and to apply for another partial or full program approval (as appropriate) based on its revisions at that time. EPA retains its inspection and enforcement authorities under RCRA sections 3007 and 3008, 42 U.S.C. 6927 and 6928, in the case of both partial and full program approvals. *See* 42 U.S.C. 6945(d)(4)(B).

There are no federally-recognized tribes within the State of Georgia, nor any federally-recognized tribal lands/reservations adjacent to Georgia's boundaries within neighboring states. Thus, EPA did not consult with any federally-recognized tribes in connection with this action.

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous, subbituminous, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR, commonly known as coal ash, include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent offsite for disposal, or beneficial use, or disposed in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule, creating regulations at 40 CFR part 257, subpart D, that established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302) ("Federal CCR regulations"). The Federal CCR regulations created a self-implementing program that regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR disposal, as well as the closure and post-closure care of CCR units. They also include recordkeeping and notification requirements for owners and operators of CCR units. The Federal

CCR regulations do not apply to activities that meet the definition of “beneficial use” of CCR, as that term is defined in § 257.53.

C. Statutory Authority

EPA is taking this action under the authority of RCRA sections 4005(d) and 7004(b)(1), [as amended by the Water Infrastructure Improvements for the Nation \(WIIN\) Act \(Pub. L. 114-322, 130 Stat. 1628\)](#). *See* 42 U.S.C. 6945(d), 6974(b)(1). Under 4005(d) of RCRA, states may develop and submit to EPA an application for approval of a state CCR permit program. *See* 42 U.S.C. 6945(d). Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), states seeking approval must submit to the Administrator “evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.” EPA shall approve a state permit program if the Administrator determines that the CCR state permit program meets the standard in RCRA section 4005(d)(1)(B), 42 U.S.C. 6945(d)(1)(B), *i.e.*, that it will require each CCR unit located in the state to achieve compliance with either: (1) the Federal CCR requirements at 40 CFR part 257, subpart D; or (2) other state criteria that the Administrator, after consultation with the state, determines to be “at least as protective as” the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of receiving a state’s complete submittal of the information required by RCRA section 4005(d)(1)(A). *See* 42 U.S.C. 6945(d)(1)(B). EPA may approve a CCR state permit program in whole or in part. *Id.* Once approved, the state permit program operates in lieu of the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(A). In a state with partial program approval, only the state requirements that have

been approved operate in lieu of the analogous Federal requirements, and facilities remain responsible for compliance with all remaining requirements in 40 CFR part 257.

Once a program is approved, the Administrator must review the approved CCR state permit program at least once every 12 years, as well as no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, or one year after any unauthorized significant release from a CCR unit located in the state occurs. *See* 42 U.S.C. 6945(d)(1)(D)(i)(I) through (III). EPA also must review an approved CCR state permit program at the request of another state alleging that the soil, groundwater, or surface water of the requesting state is or is likely to be adversely affected by a release from a CCR unit in the approved state. *See* 42 U.S.C. 6945(d)(1)(D)(i)(IV).

In a state with an approved CCR state permit program, EPA may commence administrative or judicial enforcement actions under section 3008 of RCRA, 42 U.S.C. 6928, if the state requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the state's CCR state permit program. *See* 42 U.S.C. 6945(d)(4). EPA may also exercise its inspection and information gathering authorities under section 3007 of RCRA, 42 U.S.C. 6927.

II. Georgia's Application

On April 13, 2018, GA EPD submitted its initial CCR permit program application to EPA Region 4 ("2018 application"). After receiving comments from EPA, GA EPD revised and submitted an updated application on March 6, 2019, containing a revised cover letter signed February 27, 2019, which requested approval of a part of its CCR permit program. GA EPD provided additional revisions to its 2018 application on May 23, 2019. Georgia's 2018 application, as revised by its March 6, 2019 and May 23, 2019 submittals, constitutes its final

CCR permit program application (hereinafter “CCR State Permit Program Application” or “Georgia’s Application”).¹

As noted, Georgia has requested a partial program approval of its CCR permit program. Georgia’s CCR regulations are found at Ga. Comp. R. and Regs. 391-3-4-.10 (“Georgia CCR regulations”), where the State adopted by reference nearly all of the Federal regulations in 40 CFR part 257, subpart D.² Georgia’s CCR regulations are included in Appendix C of Georgia’s Application and are available in the docket supporting this action. In addition to the technical criteria in Ga. Comp. R. and Regs. 391-3-4-.10, Georgia’s CCR permit program includes the permitting requirements at Ga. Comp. R. and Regs. 391-3-4-.10(9); the procedural permitting requirements in Ga. Comp. R. and Regs. 391-3-4-.02; the financial assurance requirements in Ga. Comp. R. and Regs. 391-3-4-.10(10) and 391-3-4-.13; and the reporting requirements in Ga. Comp. R. and Regs. 391-3-4-.17.

The Georgia CCR regulations do not adopt by reference 40 CFR 257.52(b), which requires compliance with the protections for Threatened and Endangered Species identified in 40 CFR 257.3-2, nor did they adopt by reference 40 CFR 257.50(e), which exempted from regulation inactive impoundments at inactive facilities. 40 CFR 257.50(e) and two other Federal regulations that the Georgia CCR regulations do adopt by reference have since been vacated by

¹ The revised narrative in Georgia’s Application, dated May 22, 2019, shall be substituted for the original narrative, dated March 19, 2018, and the addendum to the part 257 Checklist for CCR Surface Impoundments and CCR Landfills, submitted on March 6, 2019, shall be added to the part 257 Checklist provided with the original submission in the 2018 application. All other documents submitted as part of the 2018 application remain unchanged.

² The Georgia CCR regulations adopt 40 CFR 257.60 through 257.107 (80 FR 21468 (April 17, 2015)), as amended at 80 FR 37988 (July 2, 2015) and 81 FR 51807 (August 5, 2016). *See* Ga. Comp. R. and Regs. 391-3-4-.10(1)(c).

the U.S. Court of Appeals in *Utility Solid Waste Activities Group (USWAG), et al. v. EPA*.³

Accordingly, Georgia is not seeking approval for the following:

1. Requirements relevant to Threatened and Endangered Species in 40 CFR 257.3-2;
2. Requirements for inactive impoundments at inactive facilities, for which Federal criteria do not yet exist following the vacatur of 40 CFR 257.50(e);
3. 40 CFR 257.101(a), which allows unlined impoundments to continue receiving coal ash unless they leak (one of the vacated provisions); and
4. 40 CFR 257.71(a)(1)(i), which classifies “clay-lined” impoundments as lined (one of the vacated provisions).

Georgia’s CCR permit program covers a broader universe of CCR units than are covered under the Federal CCR regulations. While the “Applicability” section of Georgia’s CCR permit program regulations mirrors that of the Federal CCR regulations (*See* Ga. Comp. R. and Regs. 391-3-4-.10(1)(a)1. and 40 CFR 257.50(b)), and the State’s definition of “CCR Unit” matches the Federal definition (*See* Ga. Comp. R. and Regs. 391-3-4-.01(11) and 40 CFR 257.53), the Georgia CCR regulation defines “CCR Landfills” and “CCR Surface Impoundments” differently. Specifically, the State’s definitions for these units include dewatered surface impoundments, National Pollutant Discharge Elimination System (NPDES)-permitted CCR surface impoundments (inactive, but not dewatered, surface impoundments at inactive facilities), and inactive CCR landfills. *See* Ga. Comp. R. and Regs. 391-3-4-.01(9) and (10). These units are, in turn, defined at Ga. Comp. R. and Regs. 391-3-4-.10(2)(a)1. through 3. These types of

³ *See Utility Solid Waste Activities Group, et al. v EPA*, No. 15-1219 (D.C. Circuit). On August 21, 2018, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded three provisions of the Federal CCR regulations: 40 CFR 257.101(a), which allowed unlined impoundments to continue receiving coal ash unless they leak; 40 CFR 257.71(a)(1)(i), which classified “clay-lined” impoundments as lined; and 40 CFR 257.50(e), which exempted from regulation inactive impoundments at inactive facilities. Although Georgia did not adopt by reference 40 CFR 257.50(e), it did adopt by reference 40 CFR 257.71(a)(1)(i) and 40 CFR 257.101(a) at Ga. Comp. R. and Regs. 391-3-4-.10(c), two of the three provisions that were vacated.

CCR units are not covered by the Federal CCR regulations and are therefore not included in this state program approval. *See* 40 CFR 257.50(d) and (e) and 257.53. As mentioned above, the U.S. Court of Appeals in *USWAG v. EPA* vacated the exclusion at 40 CFR 257.50(e) for inactive impoundments at inactive facilities from the Federal regulations. Because EPA has not yet established any Federal regulations for inactive impoundments at inactive facilities in response to the vacatur, EPA has no Federal criteria against which to compare Georgia's regulation of these units, which is why Georgia is not seeking approval of that part of its CCR permit program.

Under Georgia's CCR permit program, owners and operators of new CCR units are required to submit to the director a complete permit application prior to the initial receipt of CCR, and owners of existing CCR units (existing landfills, active surface impoundments, and inactive surface impoundments at operating power plants) were required to submit permit applications within two years of the effective date of Georgia's CCR regulations, which was November 22, 2016. Accordingly, owners and operators of these existing units submitted permit applications to GA EPD in November 2018. The permits that will be issued by the State are considered new permits and, thus, Georgia will follow its public participation procedures for draft CCR permits, as discussed in more detail in Unit III.A.1. Georgia CCR units are issued permits for the life of the unit, with a required review every five years.

III. EPA Analysis of Georgia's Application

As discussed in Unit I.C. of this document, RCRA section 4005(d) requires EPA to evaluate two components of a CCR state permit program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the CCR state permit program itself (or other system of prior approval and conditions). *See* 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit, to

determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are “at least as protective as” the Federal requirements. *See* 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. *See* 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted an analysis of Georgia’s CCR permit program as described in its CCR State Permit Program Application, including a thorough analysis of the Georgia CCR regulations and their adoption by reference of portions of 40 CFR part 257, subpart D. As noted, Georgia has requested partial program approval of its CCR permit program.

Based on this analysis, EPA has determined that the portions of Georgia’s CCR permit program that have been submitted for approval meet the standard in sections 4005(d)(1)(A) and (B) of RCRA. Georgia’s CCR permit program includes all the elements of an adequate CCR state permit program as discussed in more detail in Unit III.A. It also contains all of the technical criteria in 40 CFR part 257, except for the provisions specifically discussed in Unit II. Consequently, EPA approves Georgia’s CCR permit program “in part.” 42 U.S.C. 6945(d)(1)(B). EPA’s analysis and findings are discussed in greater detail in Unit III.B and in the Technical Support Document, which is available in the docket supporting this action.

A. Adequacy of Georgia’s Permit Program.

RCRA section 4005(d)(1)(A) requires a state seeking program approval to submit to EPA an application with “evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units that are located in the State.” RCRA section 4005(d) does not require EPA to promulgate regulations for determining the adequacy of state programs. EPA therefore evaluated the adequacy of Georgia’s CCR permit program against the standard in RCRA section 4005(d)(1)(A) by reference to the

existing regulations in 40 CFR part 239 (Requirements for State Permit Program Determination of Adequacy) for Municipal Solid Waste Landfills (MSWLFs) and the statutory requirements for public participation in RCRA section 7004(b). The Agency's general experience in reviewing and approving state programs also informed EPA's evaluation.

In order to aid states in developing their programs and to provide a clear statement of how, in EPA's judgment, the existing regulations and statutory requirements in sections 4005(d) and 7004(b) apply to state CCR programs, EPA developed the *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* (82 FR 38685, August 15, 2017) (the "Guidance Document"). The Guidance Document provides guidance on a process and standards that states may choose to use to apply for EPA approval of their CCR permit programs, based on the existing regulations at 40 CFR part 239 and the Agency's experience in reviewing and approving state programs under the MSWLF and hazardous waste programs. EPA evaluated the adequacy of Georgia's CCR permit program using the process and statutory and regulatory standards discussed in the Guidance Document.

RCRA section 7004(b) applies to all RCRA programs, directing that "public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). Although 40 CFR part 239 applies to approval of state MSWLF programs under RCRA 4005(c)(1), rather than EPA's evaluation of CCR permit programs under RCRA 4005(d), the specific criteria outlined in part 239 provide a helpful framework to more broadly examine the various aspects of Georgia's CCR permit program. States are familiar with these criteria through the MSWLF permit program (all states with approved MSWLF permit programs have been approved pursuant to these regulations) and the regulations are generally regarded as

protective and appropriate. In general, EPA considers that a state CCR permit program that is consistent with the part 239 provisions would meet the section 7004(b)(1) directive regarding public participation. As part of analyzing Georgia's application, EPA reviewed the four categories of criteria outlined in 40 CFR part 239 as guidelines for permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

To complete its evaluation, EPA relied on the information contained in Georgia's Application, as well as all materials submitted during the public comment period and at the public hearing. The findings are also based on additional information submitted by Georgia on November 4, 2019, in a document titled *Supplemental Information in Response to Comments for Georgia's CCR Permit Program* ("GA EPD Supplemental Information document"), in response to follow-up questions from EPA regarding issues raised during the public comment period. All of this information is included in the docket for this action. A summary of EPA's findings is provided in this Unit, organized by the program elements identified in the part 239 regulations and EPA's Guidance Document.

1. Public Participation

Based on section 7004 of RCRA, 42 U.S.C. 6974, and the part 239 regulations, it is EPA's judgment that an adequate state CCR permit program will ensure that: (1) documents for permit determinations are made available for public review and comment; (2) final determinations on permit applications are made known to the public; and (3) public comments on permit determinations are considered. To meet these requirements, Georgia has adopted a policy governing the procedure for public comment on draft CCR permits, which is memorialized in its "CCR Draft Permit Public Comment Process" Memorandum (the "Cown-Dunn Memorandum"),

signed by the Director of GA EPD on April 13, 2018. Under this procedure, GA EPD will post all draft CCR permits online and concurrently notify anyone who has signed up to receive email for coal ash-related announcements of the posting. Draft permits and all information submitted as part of CCR permit applications will be available for review in person at GA EPD's Tradeport Office in Atlanta. Draft permits will be available for public comment for 30 days, and the Director of GA EPD may extend this comment period if deemed necessary. GA EPD will accept comments via email or regular mail. After the comment period ends, GA EPD will review all comments received and make any necessary changes before making a final permit decision. When issuing a final permit, GA EPD will release a response to comments on the draft permit and will notify the public in the same manner as when it provided notice of the draft permit. The final permit and response to comments will be available for review online. The Cown-Dunn Memorandum, a sample transmittal letter to the CCR facility owner, and a sample "Notice of the Opportunity for Public Comment" are included in Appendix D to Georgia's Application, and are available in the docket supporting this final approval. EPA has determined that this approach provides adequate opportunity for public participation in the permitting process sufficient to meet the standard for program approval. Georgia's public participation policy is discussed more in Unit III.D.2.

2. Guidelines for Compliance Monitoring Authority

Based on the 40 CFR part 239 regulations, it is EPA's judgment that an adequate CCR state permit program should provide the state with the authority to gather information about compliance, perform inspections, and ensure that the information it gathers is suitable for enforcement. GA EPD has compliance monitoring authority under Official Code of Georgia Annotated (O.C.G.A.) sections 12-8-23.1(a)(4), 12-8-29.1, and 12-8-23.1(a)(20). Specifically,

O.C.G.A. section 12-8-23.1(a)(4) and O.C.G.A. section 12-8-29.1 give the Director of GA EPD authority to undertake investigations, analysis, and inspections to determine compliance, and to enter property to undertake investigations to verify compliance. Further, O.C.G.A. section 12-8-23.1(a)(20) grants the Director of GA EPD the authority to exercise all incidental powers necessary to carry out the purposes of applicable State law. Together these authorities provide the State with authority to obtain records from an owner or operator to determine compliance. EPA has determined that these compliance monitoring authorities are adequate, and that this aspect of the State's CCR state permit program meets the standard for program approval.

3. Guidelines for Enforcement Authority

Based on the 40 CFR part 239 regulations, it is EPA's judgment that an adequate CCR state permit program should provide the state with adequate enforcement authority to administer its CCR state permit program, including the authority to: (1) restrain any person from engaging in activity which may damage human health or the environment, (2) sue to enjoin prohibited activity, and (3) sue to recover civil penalties for prohibited activity. GA EPD has adequate enforcement authority for its existing programs under O.C.G.A. section 12-8-23.1(a)(9), 12-8-30, 12-8-30.1, 12-8-30.4, and 12-8-30.6, and these authorities extend to Georgia's CCR permit program. For example, O.C.G.A. section 12-8-23.1(a)(9) provides the State with authority to bring an administrative or civil proceeding to enforce the Georgia Comprehensive Solid Waste Management Act and its implementing regulations. O.C.G.A. section 12-8-30 provides the State with the authority to issue orders requiring corrective action to remedy violations. Under O.C.G.A. section 12-8-30.4, the State may sue in superior court for injunctions, restraining orders, and other relief for activities that violate the State program. Finally, under O.C.G.A. section 12-8-30.6, the State has the authority to bring an administrative action to assess civil

penalties for violations of the State's program. EPA has determined that this aspect of Georgia's CCR permit program meets the standard for program approval.

4. Intervention in Civil Enforcement Proceedings

Based on section 7004 of RCRA and the 40 CFR part 239 regulations, it is EPA's judgment that an adequate CCR state permit program should provide adequate opportunity for citizen intervention in civil enforcement proceedings. Specifically, a state must either: a) provide for citizen intervention as a matter of right or b) have in place a process to (1) provide notice and opportunity for public involvement in civil enforcement actions, (2) investigate and provide responses to citizen complaints about violations, and (3) not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation. In Georgia, citizen intervention is possible in the State civil enforcement process as a matter of right for interested parties who are aggrieved or adversely affected. Pursuant to O.C.G.A. section 12-8-30.2, all hearings/reviews of enforcement actions on orders shall be conducted in accordance with O.C.G.A. section 12-2-2(c), which provides that "any person who is aggrieved or adversely affected" by an action of the Director shall have a right to a hearing before an administrative law judge, which shall be conducted in accordance with the Georgia Administrative Procedures Act, which provides for intervention by citizens in contested cases. *See* O.C.G.A. section 50-13-14. In addition to administrative enforcement actions, the Director of GA EPD also has the ability to bring civil actions pursuant to O.C.G.A. section 12-8-30.4. Such proceedings are governed by the Georgia Civil Practice Act, which allows interested parties to intervene in civil actions. O.C.G.A. section 9-11-24. EPA has determined that these authorities provide for an adequate level of citizen involvement in the enforcement process, and that this aspect of Georgia's CCR permit program meets the standard for program approval.

B. Adequacy of Technical Criteria.

EPA has determined that the technical portions of Georgia's CCR permit program that were submitted for approval meet the standard for partial program approval under RCRA section 4005(d)(1)(B)(i), 42 U.S.C. 6945(d)(1)(B)(i). To make this determination, EPA compared the technical requirements in Georgia's CCR regulations submitted for approval to their analogs in 40 CFR part 257 to determine whether they differed from the Federal requirements, and if so, whether those differences met the standard in RCRA sections 4005(d)(1)(B)(ii) and (C), 42 U.S.C. 6945(d)(1)(B)(ii) and (C). Georgia's CCR regulations are contained in Ga. Comp. R. and Regs. 391-3-4-.10, where Georgia adopts by reference portions of 40 CFR part 257, subpart D, and also spells out certain provisions. Specifically, in addition to what is required by 40 CFR part 257, the Georgia CCR regulations contain additional State-specific requirements for new and lateral expansions of CCR landfills in Ga. Comp. R. and Regs. 391-3-4-.10(3)(c)-(e); operating criteria in Ga. Comp. R. and Regs. 391-3-4-.10(5)(c); groundwater monitoring and corrective action in Ga. Comp. R. and Regs. 391-3-4-.10(6)(b)-(g); closure and post-closure care in Ga. Comp. R. and Regs. 391-3-4-.10(7)(c)-(g); and recordkeeping, notification, and posting of information to the Internet in Ga. Comp. R. and Regs. 391-3-4-.10(8)(a)1.

As discussed in Unit II, Georgia did not adopt by reference 40 CFR 257.52(b), which requires compliance with the requirements relevant to Threatened and Endangered Species in 40 CFR 257.3-2. Additionally, Georgia did not seek approval of its adoption by reference of 40 CFR 257.101(a), which allowed unlined impoundments to continue receiving coal ash unless they leak, or 40 CFR 257.71(a)(1)(i), which classified "clay-lined" impoundments as lined, since both of the Federal 40 CFR 257.101 provisions were vacated by the D.C. Circuit in *USWAG v. EPA*. As a consequence, Georgia facilities will continue to be subject to the Federal requirements

in 40 CFR 257.3-2, as well as the Federal requirements governing the criteria and timing for initiating the closure of unlined (including clay-lined) impoundments under 40 CFR 257.101.

EPA has therefore determined that the technical criteria in Georgia's partial CCR permit program submitted for approval meet the standard for partial program approval under RCRA section 4005(d)(1)(B)(i), 42 U.S.C. 6945(d)(1)(B)(i).

C. Public comment period

EPA announced its proposal to approve Georgia's CCR permit program, in part, and a 60-day public comment period on June 28, 2019 (84 FR 30977) (FRL-9995-82-OLEM). EPA also held a public hearing on August 6, 2019 in Atlanta, Georgia. The public hearing provided interested persons the opportunity to present information, views or arguments concerning EPA's proposal. Oral comments received during the public hearing are documented in the transcript of the hearing, which, along with the written comments received during the public comment period, is included in the docket for this action.

D. EPA Responses to Major Comments on the Proposed Determination

EPA received 1,462 written public comments during the comment period, including 1,110 comments submitted as part of multiple mass mail comment campaigns. The major comments received by EPA focused on seven primary topics: 1. Georgia's staffing and funding, 2. Public participation, 3. Compliance with Federal CCR regulations, 4. Location of CCR units, 5. Groundwater monitoring and corrective action issues, 6. Closure issues and unlined CCR units, and 7. *USWAG et al. v. EPA* decision. A more detailed summary of all comments received and EPA's responses to those comments are provided in the Response to Comments document included in the docket for this action.

1. Georgia staffing and funding

Comment Summary: The Agency received several comments, with varying specificity, regarding the State of Georgia's administrative resources such as funding and staffing to effectively run and enforce its CCR permit program. Specifically, some comments suggested that GA EPD lacks staff with the technical experience necessary to issue permits, monitor compliance, and enforce the program. Some commenters argued that EPA should make a determination of program inadequacy based on the State's insufficient resources. Commenters also argued that GA EPD's failure to issue any final CCR permits to date is evidence that it lacks sufficient resources.

Comment Response: EPA disagrees with the comments that the GA EPD lacks the technical expertise, staff, and budget necessary to implement the State's CCR permit program. As an initial matter, EPA reviews CCR state program applications primarily on the legal and regulatory framework that a state puts forward. Provided the information submitted demonstrates that these frameworks meet the RCRA section 4005(d)(1)(B) standard on their face, EPA does not further investigate otherwise facially credible information to attempt to forecast the State's future implementation. This is because Georgia's actual implementation of its CCR permit program will be addressed in future State program reviews, as required by the RCRA section 4005(d)(1)(D)(i).

Here, the GA EPD Supplemental Information document describes in detail the staff resources, expertise, and funding that the State has available for implementing its CCR permit program. Specifically, the GA EPD Supplemental Information document describes the staff that Georgia has dedicated to administrative reviews of permit applications, technical reviews of permit applications, and technical reviews of documents submitted either to the State or posted on a facility's publicly accessible CCR website in accordance with § 257.107 and the State

regulations at Ga. Comp. R. and Regs. 391-3-4-.10(8)(a). The GA EPD Supplemental Information document provides additional information on the qualifications of the staff who are implementing Georgia's CCR permit program. The Georgia State Legislature provides funding for GA EPD's CCR permit program positions. Funding is provided through general State appropriations. If these measures subsequently prove to be inadequate or change as part of Georgia's subsequent implementation of its CCR permit program, it will be addressed in future State program reviews, as required by RCRA section 4005(d)(1)(D)(i). See Unit I.C of this document for additional detail on EPA's authority to review approved state CCR permit programs.

EPA also disagrees with comments suggesting that GA EPD's failure to yet issue any final CCR permits in Georgia is evidence of insufficient resources or a reason to make a determination of program inadequacy. EPA generally considers this issue to be beyond the scope of this action. As noted above, EPA reviews a state's CCR permit program based on the four corners of the application and does not attempt to speculate on Georgia's subsequent implementation of its CCR permit program, as this will be addressed in future State program reviews, as required by RCRA section 4005(d)(1)(D)(i).

Moreover, based the information Georgia has submitted, EPA considers these aspects of Georgia's program to be sufficient. Owners and operators of CCR units in existence at the time of the effective date of Georgia's CCR regulations were required to submit their CCR permit applications by November 2018. *See* Ga. Comp. R. & Regs. 291-3-4-.10(9)(a). GA EPD received a total of 30 applications. GA EPD staff immediately initiated an administrative review of the applications and determined all of the applications to be complete. Technical reviews began

immediately thereafter. To date, GA EPD has initiated a review of at least 12 of the applications and has issued initial comment letters for each.

2. Public participation

Comment Summary: The Agency received various comments expressing concerns over a perceived lack of meaningful public notice and opportunity to participate in decisions regarding the methods to dispose of CCR in Georgia. Commenters argued that the Georgia CCR permit program lacks the requisite public notice and comment process required by RCRA section 7004 for both issuing initial permits and conducting five-year reviews of permits. Many commenters were concerned about a lack of any requirement for public hearings to be held on every initial CCR permit and during the five-year review of CCR permits, as is required for issuing MSWLF permits in the State.

EPA received other comments on the length of time that draft CCR permits will be available for public comment. Commenters said 30 days is an unrealistic timeframe for the draft permit comment period, and some requested that Georgia allow at least 120 days as a comment period, with the Director of GA EPD able to extend that time if deemed necessary. Several commenters were concerned about Georgia's process providing adequate notice and opportunity for comment by citizens who live in rural Georgia, where Internet access can be challenging.

Comment Response: Based on section 7004 of RCRA and the 40 CFR part 239 regulations, it is EPA's judgment that an adequate state CCR permitting program will ensure that: (1) documents for permit determinations are made available for public review and comment; (2) final determinations on permit applications are made known to the public; and (3) public comments on permit determinations are considered.

As explained in Unit III.A.1, the State of Georgia has adopted a public participation policy, in the form of a memorandum, the “Cown-Dunn Memorandum,” that describes the steps the State will follow to provide for public participation in the CCR permitting process. The Cown-Dunn Memorandum was signed by the GA EPD Director on April 13, 2018, and, and the State has committed to follow it. In addition to what is described in Georgia’s CCR State Permit Program Application, the GA EPD Supplemental Information document describes opportunities for public participation in Georgia’s CCR permit program. This information indicates that Georgia’s program will ensure the elements (1) through (3) described above.

Georgia has adopted procedures to ensure documents for permit determinations are made known and available to the public. When permit applications are received, GA EPD will conduct an administrative review within ten days of receipt to ensure that a complete application has been submitted. Once this determination is made, GA EPD will publish a public advisory on its webpage noting that the application was submitted and provide a contact for additional inquiries. Moreover, the permit application is available for public review from the time of its receipt by GA EPD.

Subsequently, according to the Cown-Dunn Memorandum, GA EPD will provide notice of draft permits to anyone who has signed up to receive emails for coal ash-related announcements. GA EPD will post the draft permit on its website and make a hard copy available (as well as all other information submitted as part of the CCR permit application) for review in its Tradeport Office in Atlanta. Public notice will be published on its Public Announcement webpage and the draft permit will be available for public comment for 30 days. If additional time is requested to extend the review time, the Director of GA EPD has the authority to extend the comment period. Georgia has also made provisions to consider public comments.

The Cown-Dunn Memorandum indicates that GA EPD will accept written comments by email or regular mail. GA EPD will review all comments received and make any necessary changes to the permit.

Finally, notice of final permit determinations will be provide to the public. When issuing the final permit, the State will notify the public via email and publish a response to comments on its website. Additionally, in accordance with Ga Comp. R. & Regs. 391-3-4-.03(5), the Director of GA EPD will notify the legal organ and the chief elected official of the host local government in which the facility is located or is proposed to be located. The legal organ can choose to publish notice of the final permit if it so chooses. Within 30 days of the final permit decision, any person who is aggrieved or adversely affected may appeal the permit by filing a petition with the Director. *See* O.C.G.A. section 12-2-2(c). The appeal process is governed by the Georgia Administrative Procedure Act codified at O.C.G.A. section 50-13-1, *et seq.*

Under Ga Comp. R. & Regs. 391-3-4-.02(1)(d), CCR permits will be subject to review every five years. Permit renewals are classified as either minor or major modifications. Any major modification will be publicly noticed as a CCR draft permit and will follow the public comment process utilized for CCR draft permits required by the Cown-Dunn Memorandum.

For members of the public who have trouble accessing the Internet, GA EPD will make hard copies of the draft CCR permits and application documents available for review at GA EPD's Tradeport Office in Atlanta and will accept written comments by regular mail.

Accordingly, EPA has determined that the Georgia CCR permit program provides for adequate public participation, thereby satisfying the requirements of RCRA section 7004.

3. Compliance with the Federal CCR regulations

Comment Summary: The Agency received a number of questions or concerns about compliance issues at individual facilities in Georgia, and the overall risk of CCR management, with varying specificity and supporting data. Most of these questions and concerns related to compliance issues regarding location restrictions, groundwater monitoring and corrective action, closure, and unlined surface impoundments. The commenters suggested these issues were reasons to not approve Georgia's CCR permit program.

Comment Response: EPA reviews of CCR state program applications focus primarily on the legal and regulatory framework that a state puts forward. The Agency has determined that the underlying State statutes and regulations provide Georgia the authority to implement the CCR permit program, and that there is evidence that Georgia has utilized its authority to implement these provisions since it adopted the Federal standards in November 2016, and also prior to that time. Given that Georgia is in the early stages of implementing its new CCR regulations, it is not unexpected that compliance with those regulations across the State may be evolving.

EPA is not making any determinations regarding the compliance status of individual facilities or CCR units based on the public comment process for this final Action. However, some commenters raised concerns about compliance issues in the broader context of program approval and questioned whether Georgia has the ability and inclination to fully implement an approved program. EPA has reviewed all significant comments on this issue and has identified evidence of actions taken by GA EPD⁴ to address non-compliance by working with facilities to correct deficiencies, including one case in which GA EPD issued a notice of violation (NOV) and worked with the facility to resolve it.

⁴ Georgia discusses actions it has taken to date to address non-compliance issues in the GA EPD Supplemental Information document.

Additionally, since owners and operators of CCR facilities submitted CCR permit applications to GA EPD in November 2018, GA EPD staff has been reviewing groundwater monitoring reports, issuing comments on alternative source demonstrations (ASD), issuing comments on Assessment of Corrective Measures, issuing comment letters imposing regulatory deadlines for the submittal of an ASD or initiating assessment monitoring, and conducting inspections of groundwater monitoring networks at numerous facilities. GA EPD plans to continue to conduct such actions as necessary, as well as to conduct inspections for the construction and operation of CCR facilities as its normal matter of practice.

EPA does not view instances of non-compliance as a reason to deny approval of a CCR state permit program. Implementation and enforcement of Georgia's CCR requirements in the State are expected to continue, and enforcement of those provisions may be initiated not only by GA EPD, but also by EPA or by citizens, as appropriate. Georgia's implementation of its approved CCR permit program will be addressed in future State program reviews, as required by RCRA section 4005(d)(1)(D)(i). See Unit I.C for additional detail on EPA's authority to review approved state CCR permit programs.

4. Location of CCR units

Comment Summary: The Agency received comments about the locations or siting of CCR units. Specifically, commenters were concerned about units that were located in or near populated areas, groundwater recharge areas, floodplains, unstable areas, and wetlands.

Comment Response: Several of the comments address the protectiveness of the Federal CCR requirements, which is beyond the scope of this action approving Georgia's CCR permit program and is not being reopened here.

Location restrictions for placement above the uppermost aquifer, in wetlands, in fault areas, in seismic impact zones, and in unstable areas are included in the Federal CCR regulations found at §§ 257.60 through 257.64. GA EPD has adopted these Federal CCR regulations by reference at Ga. Comp. R. and Regs. 391-3-4-.10(1)(c), and requires compliance with them at Ga. Comp. R. and Regs. 391-3-4-.10(3). Thus, Georgia’s CCR permit program contains identical requirements regarding location restrictions to those contained in the Federal CCR regulations. Additionally, the 100-year floodplain provisions at Ga. Comp. R. and Regs. 391-3-4-.05(1)(d) and 391-3-4-.10(9)(c)1.(ii) are identical to the Federal floodplain provision in the Federal CCR regulations at §§ 257.52(b) and 257.3-1.

The “significant groundwater recharge area” restrictions for Georgia’s MSWLFs, mentioned by some commenters, are not relevant to EPA’s approval of Georgia’s CCR permit program. RCRA section 4005(d) requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval; 1) the adequacy of the CCR state permit program itself, *see* 42 U.S.C. 6945(d)(1)(A); and 2) the adequacy of the technical criteria to be included in each permit, to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are “at least as protective as” the Federal criteria, *see* 42 U.S.C. 6945(d)(1)(B). Georgia’s significant groundwater recharge area restrictions for MSWLFs are codified at O.C.G.A. section 12-8-25.2. There is no analogous restriction in the Federal CCR regulations for CCR units, so this restriction is not needed for Georgia to meet the RCRA section 4005(d)(1)(B) standard.

Similarly, there are no criteria in the Federal CCR regulations in part 257 restricting CCR disposal near populated areas, so such restrictions are also not necessary for Georgia’s CCR permit program to meet the RCRA section 4005(d)(1)(B) standard.

5. Groundwater monitoring and corrective action issues

Comment Summary: The Agency received many comments detailing site-specific groundwater contamination allegedly caused by various CCR facilities located in the State of Georgia. Other comments were about general groundwater contamination in Georgia that could be due to CCR facilities. Some commenters described the human health and environmental impacts of certain constituents present in groundwater and surface water.

Comment Response: EPA's action in this document is on the adequacy of Georgia's CCR permit program, and EPA is not making any determinations regarding the compliance status of individual facilities or CCR units in this action. The comments addressing particular facilities' compliance with regulatory requirements are therefore beyond the scope of this action. Georgia adopts by reference the Federal CCR regulations for groundwater monitoring and corrective action at §§ 257.90, 257.91, and 257.93 through 257.98. at Ga. Comp. R. and Regs. 391-3-4-.10(1)(c), and requires compliance with them at Ga. Comp. R. and Regs. 391-3-4-.10(6)(a), and therefore meets the standard in RCRA section 4005(d)(1)(B)(i) that the program will require each CCR unit located in the state to achieve compliance with the Federal CCR requirements at 40 CFR part 257, subpart D.

An analysis of the overall risks associated with the management of CCR is specifically addressed at 80 FR 21433, in the April 2015 final rule establishing the Federal CCR regulations and is not being reopened here.

6. Closure issues and unlined CCR units

Comment Summary: Commenters were concerned about closure of CCR units with waste in place, especially if the CCR unit is unlined, near a water body, or if there is

groundwater contamination from the CCR unit detected from the groundwater monitoring and corrective action program.

Commenters also identified specific closure plans for CCR units that have been submitted to GA EPD and argued that those closure plans do not, and cannot, satisfy the closure in place requirements at § 257.102(d) or the equivalent State closure regulations. The commenters suggested that these would be reasons to not approve Georgia's CCR permit program.

Some comments raised concerns about CCR disposal units with waste left in place that commenters believed must be monitored and remediated forever to prevent water pollution. These comments also raised concerns that Georgia's CCR permit program contemplates only a 30-year post-closure care period.

Comment Response: EPA is not making any determinations regarding the adequacy of any particular closure plans prepared by individual facilities based on the public comment process for this action. EPA reviews CCR state program applications primarily on the legal and regulatory framework that a state puts forward. Here, Georgia adopts by reference the Federal closure standards §§ 257.100 through 257.104 at Ga. Comp. R. and Regs. 391-3-4-.10(7). Therefore, this aspect of Georgia's CCR permit program will require each CCR unit located in the State to achieve compliance with the Federal CCR requirements.

EPA's action in this document is on the adequacy of Georgia's CCR permit program, and EPA is not making any determinations regarding the compliance status of individual facilities or CCR units in this action. The comments addressing particular facilities' compliance with regulatory requirements are therefore beyond the scope of this action.

Moreover, GA EPD is in the process of reviewing closure plans submitted to the State, along with permit applications from the CCR facilities, and has as yet made no determinations

that EPA could review. EPA will not attempt to speculate on Georgia's subsequent implementation of its CCR permit program, as this will be addressed in future State program reviews, as required by RCRA section 4005(d)(1)(D)(i).

An analysis of overall risks associated with management of CCR is specifically addressed in the April 17, 2015 Federal CCR final rule at 80 FR 21433 but is beyond the scope of this action approving Georgia's CCR permit program and is not being reopened here.

7. *USWAG et al. v. EPA decision*

Comment Summary: A few commenters mentioned the *USWAG v. EPA*, 901 F.3d 414 (D.C. Cir. 2018) case and the fact that Georgia is seeking a partial program approval because of three issues addressed by the D.C. Circuit Court's decision in the case. Other commenters said that Georgia met the necessary criteria for a partial program approval because Georgia did not seek approval for any of the provisions in the Federal CCR regulations affected by the Court's decision. Specifically, Georgia did not seek approval for the following:

1. Requirements for inactive impoundments at inactive facilities, which EPA has yet to establish following the vacatur of 40 CFR 257.50(e);
2. Its adoption by reference of 40 CFR 257.101(a), which allows unlined impoundments to continue receiving CCR unless they leak; and
3. Its adoption by reference of 40 CFR 257.71(a)(1)(i), which classifies "clay-lined" impoundments as lined.

Comment Response: EPA has determined that partial program approval is appropriate in light of the *USWAG* decision vacating 40 CFR 257.50(e),⁵ 257.101(a), and 257.71(a)(1)(i). As some commenters noted, Georgia did not seek approval for any of the State analogues to the

⁵ As discussed in Unit II, Georgia regulates inactive surface impoundments at inactive facilities, but it did not seek approval of that part of its CCR permit program.

Federal provisions that were vacated, and EPA did not propose to approve those aspects of Georgia's CCR permit program. This means that, even after EPA's partial program approval of Georgia's CCR permit program, owners and operators of CCR units in Georgia remain responsible for complying with any Federal requirements that are promulgated in response to the D.C. Circuit's vacatur of 40 CFR 257.50(e), 257.101(a), and 257.71(a)(1)(i), through the self-implementing framework of the Federal CCR regulations. As a consequence, the Federal provisions affected by the *USWAG* decision are irrelevant to whether the other aspects of Georgia's partial CCR permit program meet the standard for approval.

IV. Approval of Georgia's State CCR Permit Program

Upon signature of this document, Georgia's CCR permit program, as described in its Application and Unit II, is approved. Because this is a partial program approval, only the State requirements that have been approved will operate in lieu of the analogous Federal requirements. Accordingly, owners and operators of CCR units in Georgia will remain responsible for compliance with all applicable requirements in 40 CFR part 257 for which Georgia did not seek approval, specifically, 40 CFR 257.3-2 (requirements relevant to Threatened and Endangered Species) and any Federal requirements that are promulgated in response to the D.C. Circuit's vacatur of 40 CFR 257.50(e), 257.101(a), and 257.71(a)(1)(i). EPA will implement such provisions under the Federal CCR program, until and unless Georgia submits a revised CCR permit program application and receives approval for these provisions. A permit issued by a state is not a shield for noncompliance with these part 257 provisions. For any CCR units that have received permits under Ga. Comp. R. and Regs. 391-3-4-.10, such permits will be in effect in lieu of the Federal 40 CFR part 257, subpart D, CCR regulations, except for those provisions noted above for which Georgia did not seek approval. For those CCR units that are not yet

permitted, the Federal regulations at part 257 will remain in effect until such time that GA EPD issues permits under its approved CCR permit program for those units.

The WIIN Act specifies that EPA will review a state CCR permit program:

- From time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;
- Not later than 3 years after the date on which the Administrator revises the applicable criteria for CCR units under part 257 of title 40, CFR (or successor regulations promulgated pursuant to RCRA sections 1008(a)(3) and 4004(a));
- Not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a CCR unit located in the state; and
- In request of any other state that asserts that the soil, groundwater, or surface water of the state is or is likely to be adversely affected by a release or potential release from a CCR unit located in the state for which the program was approved.

The WIIN Act also provides that in a state with an approved CCR permitting program, the Administrator may commence an administrative or judicial enforcement action under section 3008 if:

- The state requests that the Administrator provide assistance in the performance of an enforcement action; or
- After consideration of any other administrative or judicial enforcement action involving the CCR unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the CCR unit is operating in accordance with the criteria established under the state's permit program.

V. Action

In accordance with 42 U.S.C. 6945(d), EPA is approving Georgia's partial CCR state permit program.

Dated: December 16, 2019.

Andrew R. Wheeler,
Administrator.

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